

1 PARRA VICTOR
2 CDC No. P-58682
3 P.O. Box. 799002
4 San Diego CA. 92179

FILED

2008 JUL 11 AM 11:29

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

NUNC PRO TUNC
JUL -9 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10
11 VICTOR PARRA JR.,
12 Plaintiff,
13 v.
14 R. HERNANDEZ, et al.,
15 Defendants

Case No. 08CV0191 H CAB

NOTICE OF MOTION FOR ENLARGEMENT
OF TIME LIMIT FOR SERVICE
PURSUANT TO Fed. R. Civ. P. 4(m)

16
17 COMES NOW PLAINTIFF Victor Parra Jr. In prose.
18 Please take notice that plaintiff will move the Court for an
19 enlargement of time beyond the 120 days prescribed by Rule 4(m) of
20 Fed. R. Civ. P.

21 On March 13, 2008 this Court issued a summons to be served on
22 6 defendants. Service has been partially completed. Plaintiff now seeks
23 additional time to complete service.

24 Dated; July 1, 2008

Respectfully Submitted
Victor Parra
In pro se

25
26
27
28
1

VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08CV0191 H CAB

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra Jr DECLARE UNDER PENALTY OF PERJURY
THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 1 DAY OF: July 2008 AT RJD Corr.
FAC. P.O. Box. 799002, San Diego CA. 92179

(SIGNATURE) Victor Parra Jr
(DECLARANT PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra Jr AM A RESIDENT OF Richard J. Donovan Correctional Facility
San Diego County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~NOT~~
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX. 799002, San Diego
CA. 92179

ON July 1 2008 I SERVED THE FOREGOING: Notice of Motion
For Enlargement of time limit for service pursuant to Fed. R. Cr. P. 4(m).

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED
AT Richard J. Donovan P.O. Box. 79900 San Diego CA. 92179.

(To the Clerk)
United States District Court
Southern District of California
880 Front Street, Suite 4290
San Diego CA. 92101-8900

Sylvie P. Snyder
Deputy Attorney General
110 West A. Street, Suite 1100
San Diego CA, 92101
P.O. Box. 85266
San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 2, 2008

Victor Parra Jr
(DECLARANT PRISONER)

1 PARRA VICTOR JR.

2 CDC No. P-58682

3 P.O. Box. 799002

4 San Diego CA. 92179

5 In Prose

6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 VICTOR PARRA JR.

12 Plaintiff

13 V.

14 R. HERNANDEZ, et al.,

15 Defendants

Case No. 08CV0191 H CAB

MOTION FOR ENLARGEMENT OF
TIME LIMIT FOR SERVICE
PURSUANT TO Fed. R. Civ. P. 4(m)

16
17 On March 13, 2008 The Court issue a Summons to be
18 served on defendants.

19 There are six defendants in this case, defendants A. L. Cota and
20 The Department of Corrections have not been served.

21 On June 1, 2008, Plaintiff sent the summons and complaint to
22 the U.S. Marshal requesting service to the remaining defendants.

23 Request for Enlargement of Time

24 Federal Rules of Civil Procedure 4(m) provides that;

25 If service of the summons and complaint is not made upon a defendant
26 within 120 days after the filing of the complaint, the court, upon motion or
27 on its own initiative after notice to the plaintiff, shall dismiss the action
28 without prejudice as to that defendant or direct that service be effected
within a specified time; provided that if the plaintiff shows good cause for
the failure, the court shall extend the time for service for an appropriate
period... (Id).

1 The Summons and Complaint are supposed to be served within 120 days
 2 after the complaint is filed (Rule 4(m)). In forma pauperis complaints are not actually
 3 filed when the clerk receives them, they are filed after (IFP) status is granted
 4 28 U.S.C. Section 1915 (a). And party proceeding pro se and IFP must
 5 wait for court-appointed service by U.S. Marshal, 28 U.S.C.A. Section 1915 (c)
 6 *Lindsey V. United States R.R. Ret. Bd.*, 101 F.3d 444, 447-48 (5th Cir. 1996)

7 The Clerk of the Court signed and sealed the summons on March
 8 13, 2008. Any extension shall be granted only upon good cause shown. see
 9 Fed. R. Civ. P. 4(m) and local Rule 4.1 (a)

10 Minimally good cause requires a showing of excusable neglect, good faith and
 11 reasonable basis, beyond the plaintiffs control for failing to comply with the rules. In re
 12 *Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001) (to qualify for "good cause", plaintiff may
 13 be required to show that (a) defendant received actual notice of the lawsuit (b)
 14 defendant would not suffer prejudice; and (c) plaintiff would be severely prejudice if
 15 lawsuit were dismissed); This standard is ordinarily applied narrowly to
 16 protect only those litigants who have exercised meticulous care in attempting
 17 to complete service. *Hamilton V. Endell*, 981 F.2d 1062, 1065 (9th Cir. 1992)

18 Ordinarily, pro se litigants for whom the United States Marshal's
 19 Service may be directed to serve process will be granted a "good cause"
 20 extension of the 120 day period where a delay in service is attributable to
 21 the Marshal's service. *Puett V. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990)
 22 *Scott V. Reno*, 902 F.Supp 1190, 1196 n. 4 (C.D. Cal. 1995).

23 Defendants Cota and Department of Corrections required a second
 24 attempt of service to different addresses. The second request for service was sent
 25 to the U.S. Marshal on June 1, 2008. Additionally since the California Department
 26 of Corrections is a state Agency personal delivery of the Summons and Complaint
 27 may be required. Fed. R. Civ. P. 4(j) (2).
 28 11

1 Good Cause appearing plaintiff respectfully asks the court to fashion
2 a schedule to complete service on the remaining two defendants. And grant
3 the Enlargement of time.

4 Dated: July 1, 2008

Respectfully Submitted
Victor Parra
In pro se

VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08CV0191 H CAB

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra DECLARE UNDER PENALTY OF PERJURY
 THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 1 DAY OF: July 20 08 AT Richard J. Donovan
P.O. Box 800002, San Diego CA. 92179

(SIGNATURE) Victor Parra
 (DECLARANT PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Corr. Fac. San Diego
County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~NOT~~
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 1 20 08 I SERVED THE FOREGOING: Motion For
Enlargement of time limit for service pursuant to Fed. R. Cr. P. 4(m)

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),
 WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED
 AT Richard J. Donovan Corr. Fac. P.O. Box 800002, San Diego CA. 92179

(To the Clerk)
 United States District Court
 Southern District of California
 880 Front Street, Suite 4390
 San Diego CA. 92101-8900

Sylvie P. Snyder
 Deputy Attorney General
 110 West A. Street, Suite 1100
 San Diego CA. 92101
 P.O. Box. 85266
 San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
 REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.
 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 1, 2008

Victor Parra
 (DECLARANT PRISONER)